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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICAH McGUIRE,

Defendant.

2:16-cr-00046-GMN-PAL

PLEA AGREEMENT

**PLEA AGREEMENT UNDER
FED. R. CRIM. P. 11 (c)(1)(A) and (B)**

The United States, by and through the undersigned, and the defendant, Micah McGuire, and his attorney, Randall J. Roske, respectfully submit this Plea Agreement under Fed. R. Crim. P. 11(c)(1)(A) and (B).

I. SCOPE OF AGREEMENT

The parties to this Plea Agreement are the United States of America and the defendant, Micah McGuire. This Plea Agreement binds the defendant and the United States Attorney's Office for the District of Nevada. It does not bind any other

1 prosecuting, administrative, or regulatory authority, the United States Probation
2 Office, or the Court.

3 The Plea Agreement sets forth the parties' agreement regarding criminal
4 charges referenced in the Plea Agreement and applicable sentences, fines,
5 restitution and forfeiture. It does not control or prohibit the United States or any
6 agency or third party from seeking any other civil or administrative remedies
7 directly or indirectly against the defendant.

8 II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS

9 A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead
10 guilty to a one-count Criminal Information charging him with Obstruction of Court
11 Order, in violation of Title 18, United States Code, Sections 1509 and 2 (a Class A
12 misdemeanor).

13 B. Waiver of Trial Rights. The defendant acknowledges that he has been
14 advised and understands that by entering a plea of guilty he is waiving -- that is,
15 giving up -- certain rights guaranteed to all defendants by the laws and the
16 Constitution of the United States. Specifically, the defendant is giving up:

17 1. The right to proceed to trial by jury on all charges, or to a trial
18 by a judge if the defendant and the United States both agree;

19 2. The right to confront the witnesses against the defendant at trial
20 and to cross examine them;

21 3. The right to remain silent at such a trial, with assurance that his
22 silence could not be used against him in any way;

1 4. The right to testify in his own defense at such a trial if he so
2 chooses;

3 5. The right to compel witnesses to appear at such a trial and testify
4 in the defendant's behalf; and

5 6. The right to have the assistance of an attorney at all stages of
6 such proceedings.

7 C. Withdrawal of Guilty Plea. The defendant will not seek to withdraw
8 his guilty plea after he has entered it in court.

9 D. Move to Withdraw Guilty Plea and Dismissal of Charges. After the
10 Court has adjudged a sentence in this case, the United States and the defendant will
11 jointly move for the Court to allow McGuire to withdraw his guilty plea entered on
12 November 14, 2017, and the United States will move to dismiss all charges in the
13 Superseding Indictment filed against him on March 2, 2016.

14 E. Additional Charges. The United States agrees not to bring any
15 additional charges against the defendant arising out of the investigation in the
16 District of Nevada which culminated in this Plea Agreement or for conduct known
17 to the United States at the time of this Agreement.

18 **III. ELEMENTS OF THE OFFENSE**

19 The elements of Obstruction of Court Order in violation of Title 18, United
20 States Code, Section 1509 are the following:

- 21 1. The defendant, by threats or force,
22 2. Willfully prevented, obstructed, impeded, or interfered with,

1 3. The performance of duties under any order, judgment or decree of a
2 court of the United States.

3 **IV. FACTS SUPPORTING GUILTY PLEA**

4 A. The defendant will plead guilty because he is, in fact and under the law,
5 guilty of the crime charged.

6 B. The defendant acknowledges that if he elected to go to trial instead of
7 pleading guilty, the United States could prove his guilt beyond a reasonable doubt.
8 The defendant further acknowledges that his admissions and declarations of fact set
9 forth below satisfy every element of the charged offense.

10 C. The defendant waives any potential future claim that the facts he
11 admitted in this Plea Agreement were insufficient to satisfy the elements of the
12 charged offense.

13 D. The defendant admits and declares under penalty of perjury that the
14 facts set forth below are true and correct:

- 15 1. Beginning on or about March 28, 2014, federal law enforcement officers from
16 the United States Department of Interior, Bureau of Land Management (BLM)
17 and National Park Service (NPS), were engaged in the official duties of
18 executing federal court orders to remove and impound cattle trespassing upon
federal public lands in and around Bunkerville, Nevada, the cattle belonging
to Cliven Bundy, a local rancher.
- 19 2. On or about April 12, 2014, McGuire was present in or around Bunkerville,
20 Nevada, where he attended a rally held by Cliven Bundy and his family. At
21 the rally, McGuire heard Cliven Bundy direct those present to go to the BLM
impoundment site and to get his cattle.
- 22 3. McGuire went to the BLM impoundment site with several hundred other
23 supporters of Cliven Bundy, many of them carrying firearms, including AR-15
style, semi-automatic rifles. Seeing BLM and Park Service Officers guarding
the entrance to the impoundment site, McGuire and other Bundy supporters,

1 many of them armed, took positions in a wash opposite the entrance and on
2 the interstate freeway (I-15) overlooking the entrance, their positions being
3 taken in such a manner as to threaten entry by force. While in this area,
4 McGuire heard BLM and Park Service Officers continuously order McGuire
5 and other Bundy supporters to disperse and leave the area, advising that they
6 were interfering with the execution of federal court orders. McGuire saw the
7 Bundy supporters hold their position and refused to leave, and heard the
8 Bundy supporters yell at the BLM officers to leave the area and to release the
9 cattle.

10 4. McGuire remained in his position to support the Bundy supporters and did not
11 comply with the BLM Officers' orders. By remaining, McGuire and Bundy
12 supporters knowingly used force and the threat of force to coerce the BLM and
13 Park Service Officers to abandon their positions guarding the entrance to the
14 impoundment, leading ultimately to the forced release of the impounded cattle.

15 5. By failing to comply with the officers' orders to leave and by maintaining his
16 position opposite the entrance to the impoundment site, McGuire willfully
17 prevented, interfered with, and obstructed the officers' performance of their
18 duties pursuant to federal court orders.

19 V. COLLATERAL USE OF FACTUAL ADMISSIONS

20 The facts set forth in Section IV of this Plea Agreement shall be admissible
21 against the defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any purpose.
22 If the defendant withdraws his guilty plea set forth in this plea agreement, the facts
23 set forth in Section IV of this Plea Agreement shall be admissible at any proceeding,
including a trial, for impeaching or rebutting any evidence, argument or
representation offered by or on the defendant's behalf. The defendant expressly
waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 regarding the
use of the facts set forth in Section IV of this Plea Agreement.

1 **VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS**

2 A. Discretionary Nature of Sentencing Guidelines. The defendant
3 acknowledges that the Court must consider the United States Sentencing Guidelines
4 (“USSG” or “Sentencing Guidelines”) in determining the defendant’s sentence, but
5 that the Sentencing Guidelines are advisory, not mandatory, and the Court has
6 discretion to impose any reasonable sentence up to the maximum term of
7 imprisonment permitted by statute.

8 B. Offense Level Calculations. The parties stipulate to the following
9 calculation of the defendant’s offense level under the Sentencing Guidelines,
10 acknowledge that these stipulations do not bind the Court, and agree that they will
11 not seek to apply any other specific offense characteristics, enhancements or
12 reductions under the Sentencing Guidelines:

13	Base offense level (USSG § 2J1.2)	14
14	Special Offense Characteristics	
15	Official victim (USSG § 3A1.2(b))	+6
16	Offense was calculated to influence or affect the conduct of the government by intimidation or coercion (USSG § 3A1.4, comment n. 4))	+5
17	Adjusted Offense Level	25
18	Acceptance (USSG §§ 3E1.1(a))	(2)
19	Total Adjusted Offense Level	23
20	Adjustment under 18 U.S.C. § 3553	(9)
21	Total Offense Level	<u>14</u>

22 The defendant acknowledges that the statutory maximum sentence and any
23 statutory minimum sentence limit the Court’s discretion in determining the

1 defendant's sentence notwithstanding any applicable Sentencing Guidelines
2 provisions.

3 C. Reduction of Offense Level for Acceptance of Responsibility. Under
4 USSG § 3E1.1(a), the United States will recommend that the defendant receive a
5 two-level downward adjustment for acceptance of responsibility unless he (a) fails to
6 truthfully admit facts establishing a factual basis for the guilty plea when he enters
7 the plea; (b) fails to truthfully admit facts establishing the amount of restitution
8 owed when he enters his guilty plea; (c) fails to truthfully admit facts establishing
9 the forfeiture allegations when he enters his guilty plea; (d) provides false or
10 misleading information to the United States, the Court, Pretrial Services, or the
11 Probation Office; (e) denies involvement in the offense or provides conflicting
12 statements regarding his involvement or falsely denies or frivolously contests
13 conduct relevant to the offense; (f) attempts to withdraw his guilty plea; (g) commits
14 or attempts to commit any crime; (h) fails to appear in court; or (i) violates the
15 conditions of pretrial release.

16 These Sentencing Guidelines provisions, if applied, will result in a total
17 offense level of 14, as stated above.

18 D. Criminal History Category. The defendant acknowledges that the
19 Court may base its sentence in part on his criminal record or criminal history and
20 that the Court will determine the defendant's Criminal History Category under the
21 Sentencing Guidelines.

1 E. Relevant Conduct. The Court may consider all relevant conduct,
2 whether charged or uncharged, in determining the applicable Sentencing Guidelines
3 range and whether to depart from that range.

4 F. Additional Sentencing Information. The stipulated Sentencing
5 Guideline calculations are based on information now known to the parties. The
6 parties may provide additional information to the United States Probation Office
7 and the Court regarding the nature, scope, and extent of the defendant's criminal
8 conduct and any aggravating or mitigating facts or circumstances. Good faith efforts
9 to provide truthful information or to correct factual misstatements shall not be
10 grounds for the defendant to withdraw his guilty plea.

11 The parties further agree that other than the stipulated guidelines
12 calculations, neither party will argue for additional adjustments, enhancements, or
13 departures under the Sentencing Guidelines. The defendant, however, is free to
14 argue for further variances from the Guideline calculations under Title 18, United
15 States Code, Section 3553.

16 The defendant acknowledges that the United States Probation Office may
17 calculate the Sentencing Guidelines differently and may rely on additional
18 information it obtains through its investigation. The defendant also acknowledges
19 that the Court may rely on this and other additional information as it calculates the
20 Sentencing Guidelines range and makes other sentencing determinations as
21 appropriate, and that the Court's reliance on such information shall not be grounds
22 for the defendant to withdraw his guilty plea.

1 **VII. APPLICATION OF SENTENCING STATUTES**

2 A. Maximum Penalty. The maximum penalty for Obstruction of Court
3 Order under 18 U.S.C. § 1509 is 1 year imprisonment, a fine of \$100,000, or both.
4 Alternatively, a sentence of probation of no more than five years may be imposed in
5 lieu of a sentence of imprisonment. 18 U.S.C. § 3561(c)(2).

6 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors
7 set forth in 18 U.S.C. § 3553(a) in determining the defendant's sentence. However,
8 the statutory maximum sentence and any statutory minimum sentence limit the
9 Court's discretion in determining the defendant's sentence.

10 C. Parole Abolished. The defendant acknowledges that his prison
11 sentence cannot be shortened by early release on parole because parole has been
12 abolished.

13 D. Supervised Release. In addition to imprisonment and a fine, the
14 defendant may be subject to a term of supervised release not greater than one (1)
15 year. 18 U.S.C. § 3583(b)(3). Supervised release is a period of time after release
16 from prison during which the defendant will be subject to various restrictions and
17 requirements. If the defendant violates any condition of supervised release, the
18 Court may order the defendant's return to prison for all or part of the term of
19 supervised release, which could result in the defendant serving a total term of
20 imprisonment greater than the statutory maximum prison sentence.

21 E. Special Assessment. The defendant will pay a \$25 special assessment
22 at the time of sentencing.

1 **VIII. POSITIONS REGARDING SENTENCE**

2 The parties agree to jointly recommend a sentence of probation pursuant to
3 USSG and Title 18, United States Code, Sections 3553 and 3561(c)(2). The parties
4 further agree that the government may argue that the defendant be sentenced to up
5 to five years of probation and that the defendant may argue for one year of probation.
6 The defendant shall not seek any sentence less than one year of probation. The
7 defendant acknowledges that the Court does not have to follow this recommendation.

8 **IX. RESTITUTION**

9 The parties agree that restitution is not mandatory based on the crimes to
10 which he has pleaded guilty. As a further part of this plea agreement, the
11 government does not intend to seek non-mandatory restitution in connection with
12 the events giving rise to the Superseding Indictment.

13 **X. FORFEITURE**

14 The government agrees to dismiss any forfeiture counts following imposition
15 of sentence in this case and will not pursue any forfeiture in connection with the
16 events giving rise to the Superseding Indictment.

17 **XI. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS**

18 Before or after sentencing, or upon request by the Court, the United States,
19 or the Probation Office, the defendant will provide accurate and complete financial
20 information, submit sworn statements, and/or give depositions under oath
21 concerning his assets. The defendant will release such funds and property under his
22 control in order to pay any assessment and/or fine imposed by the Court.

XII. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS

A. Plea Agreement and Decision to Plead Guilty. The defendant acknowledges that:

1. He has read this Plea Agreement and understands its terms and conditions;

2. He has had adequate time to discuss this case, the evidence, and this Plea Agreement with his attorney;

3. He has discussed the terms of this Plea Agreement with his attorney;

4. The representations contained in this Plea Agreement are true and correct, including the facts set forth in Section IV; and

5. He was not under the influence of any alcohol, drug, or medicine that would impair his ability to understand the Agreement when he considered signing this Plea Agreement and when he signed it.

The defendant understands that he alone decides whether to plead guilty or go to trial, and acknowledges that he has decided to enter his guilty plea knowing of the charges brought against him, his possible defenses, and the benefits and possible detriments of proceeding to trial. The defendant also acknowledges that he decided to plead guilty voluntarily and that no one coerced or threatened him to enter into this Plea Agreement.

B. Waiver of Appeal and Post-Conviction Proceedings. The defendant knowingly and expressly waives: (a) the right to appeal any sentence imposed within or below the applicable Sentencing Guideline range as determined by the Court; (b)

1 the right to appeal the manner in which the Court determined that sentence on the
2 grounds set forth in 18 U.S.C. § 3742; and (c) the right to appeal any other aspect of
3 the conviction or sentence and any order of restitution or forfeiture.

4 The defendant also knowingly and expressly waives all collateral challenges,
5 including any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the
6 procedure by which the Court adjudicated guilt and imposed sentence, except non-
7 waivable claims of ineffective assistance of counsel.

8 The defendant reserves only the right to appeal any portion of the sentence
9 that is an upward departure from the Sentencing Guidelines range determined by
10 the Court.

11 The defendant acknowledges that the United States is not obligated or
12 required to preserve any evidence obtained in the investigation of this case.

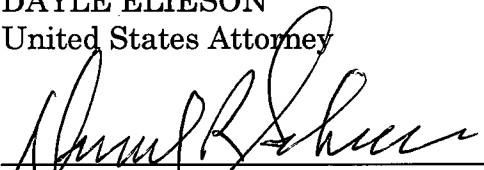
13 C. Removal/Deportation Consequences. The defendant understands and
14 acknowledges that if he is not a United States citizen, then it is highly probable that
15 he will be permanently removed (deported) from the United States as a consequence
16 of pleading guilty under the terms of this Plea Agreement. The defendant has also
17 been advised if his conviction is for an offense described in 8 U.S.C. § 1101(a)(43), he
18 will be deported and removed from the United States and will not be allowed to
19 return to the United States at any time in the future. The defendant desires to plead
20 guilty regardless of any immigration consequences that may result from his guilty
21 plea, even if the consequence is automatic removal from the United States with no
22 possibility of returning. The defendant acknowledges that he has specifically
23 discussed these removal/deportation consequences with his attorney.

1 **XIII. ADDITIONAL ACKNOWLEDGMENTS**

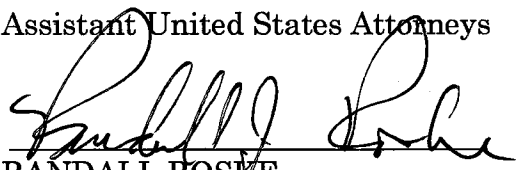
2 This Plea Agreement resulted from an arms-length negotiation in which both
 3 parties bargained for and received valuable benefits in exchange for valuable
 4 concessions. It constitutes the entire agreement negotiated and agreed to by the
 5 parties. No promises, agreements or conditions other than those set forth in this
 6 agreement have been made or implied by the defendant, the defendant's attorney, or
 7 the United States, and no additional promises, agreements or conditions shall have
 8 any force or effect unless set forth in writing and signed by all parties or confirmed
 9 on the record before the Court.

10
 11
 12 7/18/18
 13 DATE

DAYLE ELIESON
 United States Attorney


 STEVEN W. MYHRE
 DANIEL R. SCHIESS
 NADIA J. AHMED
 Assistant United States Attorneys

14
 15
 16 7/18/2018
 17 DATE


 RANDALL ROSKE
 Counsel for Defendant

18
 19 7/18/18
 20 DATE


 MICAH McGUIRE
 Defendant